BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

CHRISTINE HUNTSMAN	)	
Claimant	)	
VS.	)	
	)	Docket No. 1,024,044
USD 501	)	
Respondent	)	
Self-Insured	)	

ORDER

Respondent appeals the May 5, 2006 preliminary hearing Order of Administrative Law Judge Brad E. Avery. Claimant was awarded benefits after the Administrative Law Judge (ALJ) determined that claimant had suffered accidental injury arising out of and in the course of her employment with respondent.

ISSUES

1. Did claimant prove that she suffered accidental injury arising out of and in the course of her employment with respondent?

2. Were claimant's injuries caused by claimant's employment with the National Education Association of Topeka (NEAT)?

3. Were claimant's injuries caused by claimant's non-work activities?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board (Board) finds the Order of the ALJ should be affirmed.

Claimant has been a teacher for respondent for several years. She is alleging bilateral upper extremity problems associated with that employment through May 20, 2005. Claimant's history is significant in that she was diagnosed with bilateral carpal tunnel syndrome in 1988 and has periodically worn splints on her wrists since that time.

From 1999 to 2003, claimant took a leave of absence from respondent in order to serve as union president for NEAT. Claimant returned to her teaching duties in 2003 and

remained there for the next two years. Claimant alleges an aggravation of her preexisting bilateral carpal tunnel syndrome as the result of her teaching activities with respondent.

Respondent argues that it was claimant's activities while with NEAT, along with claimant's outside activities of knitting, quilting and playing the piano, which caused her current problems and not her work duties with respondent.

Claimant testified that her duties with NEAT only required about one hour of keyboarding or computer work per day. This testimony is somewhat contradicted by Sharon Kailey, a reading specialist with respondent at Eisenhower Middle School. Ms. Kailey served as NEAT president for two years from 2003 to 2005. Ms. Kailey testified that she spent a good deal of her day on the computer, answering e-mails. However, Ms. Kailey also testified that claimant had told her the high school work with respondent was much heavier. Claimant told Ms. Kailey that she was using several different computers while working for respondent, and that was causing her problems. Ms. Kailey was unable to testify regarding claimant's activities at the high school.

Claimant was examined by board certified orthopedic surgeon Sergio Delgado, M.D., on October 18, 2005, at the request of her attorney. Dr. Delgado diagnosed claimant with bilateral carpal tunnel syndrome which he opined was aggravated by her work activities with respondent. He was unable to testify how much physical activity was required in her job with respondent. But claimant's history to him indicated her hand difficulties improved while claimant was NEAT President. The symptoms then worsened when claimant returned to teaching.

In workers compensation litigation, it is the claimant's burden to prove her entitlement to benefits by a preponderance of the credible evidence.[1]

> If in any employment to which the workers compensation act applies, personal injury by accident arising out of and in the course of employment is caused to an employee, the employer shall be liable to pay compensation to the employee in accordance with the provisions of the workers compensation act.[2]

The two phrases "arising out of" and "in the course of," as used in K.S.A. 44-501, et seq.,

> . . . have separate and distinct meanings; they are conjunctive and each condition must exist before compensation is allowable. The phrase "in the course of" employment relates to the time, place and circumstances under which the accident occurred, and means the injury happened while the workman was at work in his

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[1] K.S.A. 44-501 and K.S.A. 2004 Supp. 44-508(g).

[2] K.S.A. 44-501(a).

> employer's service. The phrase "out of" the employment points to the cause or origin of the accident and requires some causal connection between the accidental injury and the employment. An injury arises "out of" employment if it arises out of the nature, conditions, obligations and incidents of the employment."[3]

It is well established under the Workers Compensation Act in Kansas that when a worker's job duties aggravate or accelerate an existing condition or disease, or intensify a preexisting condition, the aggravation becomes compensable as a work-related accident.[4]

The evidence in this record indicates claimant's problems were aggravated by her employment with respondent. For preliminary purposes, the Board finds claimant has proven an aggravation of her preexisting condition from her duties with respondent and, therefore, affirms the award of benefits.

As is always the case, these findings are not binding upon a full hearing on the claim but shall be subject to a full presentation of the facts.[5]

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Brad E. Avery dated May 5, 2006, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of July, 2006.

BOARD MEMBER

c: James B. Biggs, Attorney for Claimant
Larry G. Karns, Attorney for Respondent
Brad E. Avery, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

[3] *Hormann v. New Hampshire Ins. Co.*, 236 Kan. 190, 689 P.2d 837 (1984); *citing Newman v. Bennett*, 212 Kan. 562, Syl. ¶ 1, 512 P.2d 497 (1973).

[4] *Demars v. Rickel Manufacturing Corporation*, 223 Kan. 374, 573 P.2d 1036 (1978).

[5] K.S.A. 44-534a(a)(2).